IN THE MATTER OF the Ontario *Human Rights Code, 1981* S.O. 1981, C.53, AS AMENDED;

AND IN THE MATTER OF the Complaints, dated November 30, 1990, December 3, 1990, and March 18, 1991, filed by Corazon Mayang, Anastacia Salas, Aniolena Pabito, and Nida Rios, respectively, alleging discrimination in accommodation because of ethnic origin, place of origin, sex and reprisal or threat of reprisal by Al-Ben-Gros Holdings Limited, A. Grosman, B. Grosman and Mike Boudreault.

Before: H.A. Bassford
Chairperson

Appearances: Catherine Bickley, for the Ontario Human Rights Commission

L. Robinson, for the Complainants

J, Knowles, for the Respondents

Date: August 3, 1993

DECISION RE PRELIMINARY MOTIONS

I was appointed as a Board of Inquiry by the Minister of Citizenship, the Hon. Elaine Ziemba, on January 26 , 1993. The four complaints before me were made under the *Ontario Human Code* 1991. They allege discrimination in accommodation on the basis of ethnic origin, place of origin, sex and reprisal or threat of reprisal. Hearings were held on April 13, April 23 and June 9, 1993, in order to hear preliminary objections to the matter. There were four motions for dismissal of the complaints, a motion for dismissal of the complaints against Al-Ben-Gros Holdings Limited, Alan Grosman and Ben Grosman, and a motion asking that the complaints not be combined. I shall consider each in turn.

1. Dismissal because of delay.

The respondents argued that the complaints should be dismissed under Section 23 (1) of the *Statutory Powers Procedure Act* in that the delay of the Complainants in initiating their complaints, and the delay of the Commission in investigating and bringing the matters to the board of inquiry constitute an abuse of process.

Counsel for the Respondents noted that there was a delay of from twenty to thirty one months between the time of the alleged factual bases of the complaints and the time at which the individual Complainants made their complaints to the Commission. The respondents became aware of the complaints on about February 8, 1991 (Exhibit 3, paragraph 3). The case summaries were forwarded on or about April 14, 1992 (Exhibit 3, paragraph 6). This is fourteen months after the Respondents were made aware of the complaints. The request for a Board of Inquiry was made in October 1992, at which time three of the complaints were three and a half years old and one was four and a half years old.

The Respondents allege that they have been prejudiced by this delay. The prejudice is two-fold. First, two of the respondents, Mr. Alan Grosman and Mr. Mike Boudreault, and one of the probable key witnesses, Ms. Helen Rogers, Mr. Boudreault's wife, have moved from the Province and set up in business in the state of Florida. Because they cannot, for both business and family reasons, attend hearings before the board at the same time, the hearing of this matter will have to be conducted over an extended period of time. The result will be a great deal of expense for travel and disruption to their business in order to defend against the allegations.

Second, the age of the allegations, which is four or five years, prejudices the Respondents to fully and fairly defend themselves. The case will turn on "issues of credibility, which in turn will be affected by witnesses' ability to recollect facts which occurred so long ago (Transcript, v.1, p.22)." Further, given that the Respondents learned of the allegations between two and three years after the alleged events, they were unable, and are now more unable, to go back to ask questions of other witness, such as other tenants who may have been in the

building at the time.

Counsel for the Human Rights Commission agreed that disruption to business and personal schedules is inevitable in any legal proceeding. Counsel submitted that it is possible to schedule proceedings so that Ms. Rogers and Mr. Boudreault could attend at different times, and that Mr. Boudreault could avail himself of babysitters while Ms. Rogers was attending in order to continue his work. Also Mr. Alan Grosman has not been shown not to have business interests in Ontario, and was in Toronto on April 2, 1993, when he swore his affidavit. Counsel submitted that should the board dismiss the complaints there would be an opportunity y for the Respondents to "revisit" the question of hardship.

Counsel for the Commission argued further that the events in question "are not such that the passage of time by itself will lead to the presumption of irreparably faded memories (Tran script, v.1,p.90). The acts in question are not a matter of nuance, but straightforward allegations, which there is no reason to believe the witnesses cannot recall. Further, she claimed, this is a question which is best tested when the witnesses are called to testify.

In general Boards of Inquiry have followed the reasoning in *Hyman v. Southam Murray* (1981), 3 C.H.R.R. D/617 (Ont. Bd. of Inq.) in considering dismissals of complaints because of delay. In that case Professor McCamus stated,

> My own view is that while unreasonable delay might be a factor to be taken into account in refusing or fashioning a remedy ... or in weighing the persuasive force or credibility of testimony or other evidence, delay in initiating or processing a complaint should not be a basis for dismissing the complaint at the outset of the proceedings before a board of inquiry unless it has given rise to a situation in which the board of inquiry is of the view that the facts relating to the incident in question cannot be established with sufficient certainty to constitute the basis of a determination that a contravention of the Code has occurred. Having been assigned ... a statutorily defined task of undertaking an inquiry to ascertain certain facts, the board of inquiry should proceed to attempt to do so, notwithstanding the passage of considerable time, unless the passage of time has made fulfilment of its task impossible.

I do not believe that this principle has been significantly altered in the one presented case wherein delay was one of the factors in dismissal (*Alan Shreve v.the Corporation of the City of Windsor* (1993), O.H.R.D. (unreported). Mr. Karr states (p.16), "To justify dismissal, delay must result in serious prejudice to the ability of the Respondent to present its case."

The implication of both these quotations is that while delay can lead to abuse of process the standard for deciding this is a high one.

The circumstances of this case do not, I believe, meet this standard. (1) It has not been made out that the factual matters are of the sort which would have been the appropriate subject of problems of fading memory. (2) The alleged acts of requiring "key money" took place in 1988 in one case and in Winter of 1989 in the others. Rent review proceedings dealing with this issue commenced in November, 1990, so it is prima facie probable that the Respondents would have refreshed their memories at that time. I accordingly hold that the delays incurred in these cases do not constitute an abuse of process, and I do not dismiss the Complaints on this basis.

I should like to add, however, that this decision does not foreclose the possibility that in the presentation of evidence it could arise that the matters discussed above could appear to be operative and to be causing the Respondents undue prejudice in the presentation of their defence. I shall entertain motions on this matter at anytime during the hearing, and consider the issue on the basis of the evidence before me at that time.

I do not see the inconvenience and expense of travel as relevant to the question of abuse of process. Should the complaints be dismissed it may be appropriate to raise this matter under Section 41 (6) of the *Human Rights Code*.

2. Dismissal because of failure to disclose.

The decision on this matter must, however, be considered in light of the motion of the Respondent's which arose in response to the first day of the hearing. This is the claim that prior to that hearing day no allegations had been disclosed with respect to Mr. Alan Grosman, and that prior to that day there had been no disclosure of the fact that there would be a claim for emotional damages. The Respondent's submit that in combination with the delay the failure to disclose should be considered an abuse of process and that the Complaints should be dismissed.

The Respondent motion respecting nondisclosure with respect to allegations against Mr. Alan Grosman, arose after the testimony of Ms. Caryl Herbert, the Commission case officer in this matter, that a witness had told her that "Mr Boudreault would split any key money he collected 50/50 with Alan Grosman -- or, sorry, with his boss (Transcript, v.1, p. 74)." Ms. Herbert further testified that she informed Mr. Grosman at an investiga-

tion meeting of March 5, 1992 that there was evidence to suggest this fact, and that he denied that this was the case.

Counsel for the Respondents claimed that this allegation, "was one that was never included in the Complaint. It was brought to the Respondent Alan Grosman's attention during the meeting with the investigator, but it was never mentioned again and it was not included in the investigator's Case Summaries which were prepared after the investigative meeting with Mr. Grosman (Transcript, v.3, p.3)." This factual situation was not disputed by either Counsel for the Commission or Agent for the Complainants. The question is whether it gives rise to abuse of process.

Counsel for the Respondents noted Section 8 of the *Statutory Powers Procedures Act*, which provides that:

> Where the good character, propriety of conduct or competence of party is in issue in a proceeding the party is entitled to be furnished prior to the Hearing with the reasonable information of any allegations with respect thereto.

The interpretation of reasonable information is that found in *Dubajic et al v. Walbar Machine Products* (1980), 1 C.H.R.R. D/228, #2006, wherein the Chair states,

> Whatever the scope of the information which must be furnished its purpose is to define the issues and thereby prevent surprise by enabling the party against who allegations are made to prepare for the Hearing. At the very least, Section 8 of t he Act, in order to fulfil this purpose, would require that Walbar be furnished with a written statement of the material facts upon which the Commission intends to rely in support of the allegations with respect to the issues involving Walbar's good character or the propriety of its conduct. Such material facts should include when and where the alleged acts, which raise the issues, occurred, as well as the names of such persons who are referred to in the allegations, subject to the exceptions above noted.

This level of disclosure was not reached, and Counsel for the Respondents argued that providing disclosure now cannot allow the matter to be rectified, because given the time which has passed, the ability of the Respondents to prepare their case is severely prejudiced. For authority in the matter Counsel for the Respon-

dents relied upon the decision in *Shreve*, which dismissed that case based upon a combination of bias on the part of the investigating officer, non-disclosure, and delay.

> "In other words, taken separately, bias of the investigating officer, lapse of time, and restricted disclosure by the Commission would not necessarily, nor on the facts of this case, deprive the Respondents of a fair hearing at the Board of Inquiry stage. In combination, however, these circumstances seriously prejudiced the ability of the Respondents to prepare their case in a timely fashion. This violates the principle of fairness. It causes a prejudice that cannot really be cured at the Board of Inquiry stage since one power a Board definitely lacks is that to turn back the clock (pp.23-24)."

The argument is similar for the claim for damages based upon mental distress. These allegations took the Respondents by surprise, so they have had no opportunity to prepare to defend against these allegations. Given the amount of time which has passed they will be unable to gather witnesses to dispute these claims, to give evidence about the state of minds of the Complainants at the time they rented the apartments, etc. Accordingly, the Respondents request that the complaints be dismissed.

The response to the first prong of this objection, disclosure re Mr. Alan Grosman, was made by Counsel for the Commission. She argued first that the splitting of key money is not the only basis on which the Commission argues that Mr. Grosman should remain a party. "The evidence has been that Mr. Grosman was very involved in the daily management of the building in question (Transcript, v.3, p.29)." Second, the evidence of the Human Rights Officer (quoted above, pp.4-5) was clear and was unchallenged on cross-examination.

Counsel for the Commission referred as well to the recent interim decision in *Elizabeth Clinton v. Ontario Blue Cross* (1993), O.H.R.D.(unreported). There the Chair, Jeffrey House, held that a complaint under the Code is not strictly analogous to a statement of claim under the Rules of Civil Procedure nor to an indictment of information under the Criminal Code, and stated(p.2),

> In other words, even if the original Complaint itself discloses no basis for finding a party liable it may be that the evidence gathered by the Commission does so and that it is on the basis of that evidence that the

Commission alleges that a given party has infringed a right under the Code.

Mr. House went on to require that the Commission provide those Respondents with more specifics about the allegations against them. Counsel for the Commission then stated that the Commission will, prior to the hearing on the merits, provide notice of the identity of the Commission's intended witnesses, an outline of their anticipated evidence and notice of any documents upon which it intends to rely.

Counsel also appealed to the case of *Julia Adai v. K.B.Home Insulation Ltd* (1992), 15 C.H.R.R. D/331. Therein the Board decided that while some particulars should be provided to the Respondents, it did not provide the full statements of witnesses made during the course of investigation nor the names of the witnesses.

Submissions with respect to the need for notice of the claim for damages for mental anguish were made by both Counsel for the Commission and Agent for the Complainants. Counsel for the Commission provided the cases of *Cameron v.Nel-Gor* (1984) C.H.R.R. 5, D/2170, *Grant v.Wilcock* (1991) C.H.R.R. 13, D/22, and *Rapson v. Stemms Restaurants Ltd.* (1991) C.H.R.R. 14, D/449. These cases all confirm the position that general damages are normally awarded in human rights cases, and that the case law is quite consistent with respect to a presumption in favour of general and specific damages. Therefore there is no basis for "some special obligation on the part of Complainants or the Commission t o advise Respondents in each and every case that damages can be awarded at a Board of Inquiry and that absent special circumstances, the Commission and the Complainants will be seeking such damages (Transcript, v. 3, p. 24).

Agent for the Complainants noted in addition the Case Summaries of Corazon Mayang and Anastasis Salas, both of which make allegations of reprisal against Mr. Boudreault. Each of these Summaries " would lead one to believe that a person would experience mental anguish as a result (Transcript, v. 3, p.43).

Decision

To my mind, the key fact with respect to the first prong of this objection is that the Human Rights Officer did apprise Mr. Grosman of the existence of the putative evidence against him in the meeting of March 5, 1992. This was not included in the Case Summary, so it does not provide the written disclosure suggested in *Walbar*, and which would have been preferable. But it is

alleged evidence the Commission had before it, and it was given to the Respondents during an official action of the Commission. I cannot then see that there is a clear case of non-disclosure, and certainly not a sufficient case to demonstrate abuse of process.

Even if there were non-disclosure, I do not think that abuse of process would be made out so as to require dismissal of the complaints. The alleged evidence has to do with a statement made to the Human Rights Officer. Until the Commission and the Complainants present this evidence, and the Respondents test its credibility, the board cannot know whether or not the incomplete disclosure has been such, because of the time delay involved, that the Respondents are severely prejudiced in their ability to defend themselves.

The second prong of the objection, namely the nondisclosure of the intent to request general and special damages, is sufficiently answered by the human rights case law, which demonstrates a consistent presumption that such damages will be requested, and when the complaints should be upheld, usually awarded. I can find no basis for thinking this should be a matter for specific disclosure.

I accordingly rule that the degree of non-disclosure, even when combined with the delay involved, does not give rise to abuse of process and therefore do not dismiss the Complaints on this ground.

3.Dismissal because of proceeding brought under another Act.

Counsel for the Respondents pointed out that the Complainants Mayang, Salas and Rios have made application under the Residential Rent Regulation Act for return of the cash payments they allegedly made to the Respondents. Counsel noted further that in its case summaries the Commission suggests that key money was taken from person's other than Filipino women, in particular from "a white female of non-minority status,"which means that the only grounds left are the allegations that the Respondents took key money. Accordingly, this case should be dealt with under a different Act, and the board should dismiss these complaints under sections 34 (1) (a) and (b) of the *Human Rights Code*. With respect to 34(1)(b) counsel for the Respondents submitted that a proceeding is considered frivolous, vexatious and an abuse of process if its effect is to re-litigate a case disposed of in a former action (*Wightman v. Coffin* (1914), 6. O.W.N. 112 (H.C.)).

Both Counsel for the Commission and Agent for the Complainants noted that the *Human Rights Code* addresses the issue of discrimination and provides for general damages in respect to the breach of human rights. The Complainants are not looking to be compensated twice. Further the Human Rights Commission is also a party to the proceedings, and will seek public interest remedies separate from remedies for the Complainants. Agent for the Complainants noted that the Rent Review Hearings Board did not take into account the summary by the Ontario Human Rights Commission, since they were not dealing with the complaints of discrimination.

Counsel for the Commission also stated the allegation of the Commission that the "payment of key money in the circumstances of these four Complainants also amounted to discrimination (Transcript, v.1, p.101)." The Commission will argue this on two bases: first, that the Complainants were targeted because of their vulnerability due to their sex, ethnic origin and place of origin; second, that because of their particular characteristics, the requiring of key money had a particularly adverse affect on them.

Decision

The objection turns upon the statement by the Commission, in their Case Summaries, that a white female of non-ethnic origin also paid key money. I am being asked to draw the implication that because of this fact the sex, ethnic origin or place of origin of the Complainants is not a ground for discrimination against them in asking for key money. While this fact is relevant to the conclusion I am being asked to draw, it is not a conclusion I can make absent the evidence and argument on the substance of the matter indicated by the Commission and Complainants, and absent the evidence in reply of the Respondents. Accordingly, I rule that the facts before me are not sufficient to conclude that the Complaints should be dismissed on the grounds presented.

4. That the complaints should be dismissed against the Corporate Respondent and the individual respondents, Alan Grosman and Ben Grosman.

The Respondents argued that in the Complaints or Case Summaries there were no allegations against either Mr. Ben Grosman or Mr. Alan Grosman, and that accordingly the complaints against these two individuals should be dismissed.

Counsel for the Commission agreed to this with respect to Mr. Ben Grosman, and Agent for the Complainants did not oppose it. There was no indication of any evidence to be provided with respect to Mr. Ben Grosman's involvement. I accordingly order that the Complaints against Mr. Ben Grosman are dismissed.

The testimony of Ms. Herbert was that there is alleged evidence against Mr. Alan Grosman. Details of the allegations were discussed in Section 2 above. I accordingly do not order that the complaints against Mr. Alan Grosman be dismissed.

Let me now turn to the question of the Corporate Respondent. Section 45 of the *Human Rights Code* states that "any act or thing done or omitted to be done in the course of his or her employment by an ... employee...of a corporation... shall be deemed to be an act or thing done or omitted to be done by the corporation .... The dispute between the parties is, on the assumption for purposes of this consideration that Mr. Boudreault did take key money, whether or not he did so in the course of his employment.

Counsel for the Respondents referred to two authorities. First is Halsbury's Laws of England, 4th edition, V.1, para.820.

> Where an act done by an agent is not within the scope of the agent's express or implied authority, or falls outside the apparent scope of his authority, the principal is not bound by, or liable for, that act, even if the opportunity to do it arose out of the agency, and it was purported to be done on his behalf, unless he expressly adopted it by taking the benefit of it or otherwise.

The second is *Dooragang Investments Pty. Ltd. v. Richardson et al* (1981), 3 All E.R. 65. There it is made clear that these issues must be approached in light of the reality that employees have minds of their own (p.68). Counsel pointed out the statement (p.70), "It remains true to say that, whatever exceptions or qualifications may be introduced, the underlying principle remains that a servant, even while performing acts of the class which he was authorised, or employed, to do, may so clearly depart from the scope of his employment that his master will not be liable for his wrongful acts."

Counsel for the Respondents noted that there is no allegation that the Corporation benefitted from the alleged taking of key money. Further, "It was certainly not within the scope of Mr. Boudreault's employment function to take key money from

prospective tenants. He was employed as a superintendent. He was not employed to undertake illegal acts (Transcript, v.1, p.42).

Counsel for the Commission argued that the alleged act of taking key money was not something done totally outside his role as a superintendent, but was allegedly done while accepting rental applications from prospective tenants, which was one of his duties. Further, she argued that if a breach of the law could not be considered as being within the course of employment then no corporation could ever be found guilty of a breach of the Code where an employee has breached the Code. This would be to remove the purpose of that section of the Code.

Counsel for the Commission presented two cases in support. In *Holt v. Cokato Apartments Ltd.* (1987), 9 C.H.R.R. D/4681, the B.C. Human Rights Council found that a building's owner was liable for the breach of the B.C. Human Rights Code by an apartment manager, even though the owner did not know of the manager's discriminatory behaviour and would not have condoned it had he known. The judgement quotes from the decision by the Supreme Court of Canada in *Robichaud v. Canada (Treasury Board)*(1987), 8 C.H.R.R. D/4326. There LaForest J. says

> ...[T]he statute contemplates the imposition of liability on employers for all acts of their employees "in the course of employment" interpreted in the purposive fashion outlined earlier as being in some way related or associated with the employment. It is unnecessary to attach any label to this type of liability; it is purely statutory. However, it serves a purpose somewhat similar to that of vicarious responsibility for an organization on those who control it and who are in a position to take effective remedial action to remove undesirable conditions.

Counsel for the Commission also relied upon *Booker v.Floriri Village Investments Inc.*(1989), 11 C.H.R.R. D/44. In that case the Chair, Rabbi Plaut, held that a superintendent discriminated in denying a complainant accommodation because she was a single parent, and that in dealing with applicants for apartments was acting as an employee of the corporation. He held that the superintendent so acted even if management did not authorize him to do so, and would be doing so even if they had given him contrary instructions (D/51).

Decision

The jurisprudence with respect to human rights cases, possibly as opposed to that in civil cases, makes it clear that Section 45 of the Code is to be broadly construed. The reasoning of LaForest J. above would imply that this section is applicable if the prohibited act is "in some way related or associated with the employment". The alleged act of taking key money is "in some way related" in that it occurs during the taking of rental applications. It does not have to be explicitly in the job description or condoned by the Corporate Respondent to be so related. I hold that Section 45 is applicable to this case, and do not dismiss the Complaints against the Corporate Respondent.

5.That the Complaints should be separated, and in the separate hearings similar fact evidence of each of the other Complainants not be heard.

Section 32 (3) of the *Code* is as follows:

> (3) Where two or more complaints,
>
> (a) bring into question a practice of infringement engaged in by the same person; or
>
> (b) have questions of law or fact in common,
>
> the Commission may combine the complaints and deal with them in the same proceeding.

The Commission has invoked this Section with respect to the four complaints in the present case (Exhibit 3 E).

The Respondents asked that the Complaints should not be joined, citing jurisdiction to do so from Section 23(1) of the *Statutory Power Procedures Act*, and referring for analogy to Rule 5.05 of the *Rules of Civil Procedure*.

As one authority Counsel for the Respondents referrer to *Bell v. Ladas et al* (1980), 1 C.H.R.R., D/155, wherein the Board stated,

> The danger in admitting similar fact evidence is that the accused person may be convicted not on the basis of evidence relating to the offence, with which he or she is charged, but on the basis of evidence of other acts which show the accused has a disposition which makes it likely that the accused committed the offence for which he or she is being tried.

Counsel also referred to *Boardman v. Director of Public Prosecutions*,(1975) A.C. 421. wherein it was held (p.439) that "to be admissible, evidence must be related to something more

than isolated instances of the same kind of offence." She also referred to p.459, wherein the court asks whether "his accusers may not have put their heads together to concoct false evidence and if there is any real chance of this having occurred the similar fact evidence must be excluded."

Counsel finally drew upon *Wan et.al. v. Greygo Gardens et al*(1982), 3 C.H.R.R., D/812. In that case the Chair ruled against the combining of three complaints because two separate incidents were involved. The Chair also stated that "similar fact evidence should be excluded where the risk of undue prejudice outweighs the real probative value of the evidence (D/813)," and expressed particular concern in cases wherein the parties who allege similar facts have discussed their situations prior to giving evidence.

Counsel argued that given that the in the four Complaints the Complainants state that they became aware of similar fact Complaints as a result of a tenant survey, which was discussed at a tenant's meeting, there is strong likelihood that the Complainants have discussed their allegations among themselves. Referring to the Chairs doubt in Greygo that a Tribunal could draw a distinction "between the impressions created upon it by two witnesses recanting the same sets of events", Counsel urged that the Complaints be separated and that similar fact evidence of each of the individual Complainants not be heard at the separate hearings.

Counsel for the Commission argued that it is more expeditious to combine the four Complaints than to require the much more expensive and longer hearing that separating them would require. She argued that the proper time to assess the admissibility of similar fact evidence is at the time the evidence is called. She noted that in Greygo the Board did not separate two complaints, and held a voir dire to consider what weight it should give to the similar fact evidence, and suggested a similar route here.

Counsel noted that similar fact evidence has been admitted in other Human Rights cases. In *Green v. 709637 Ontario Inc.* (1987), 9 C.H.R.R. D/4749 (Ont. Bd. of Inq.); affirmed Ont. Div. Ct. November 18, 1988, In that case, the Chair, Rabbi Plaut reviewed the previous jurisprudence on this matter and held that similar fact evidence was regularly admissible. The Board held that while similar fact evidence does not in itself constitute proof that the alleged incidents took place it may help to confirm that the "respondent acted according to certain patters with elucidate the respondent's behaviour and character."

Similar fact evidence was also admitted in *Commodore Business Machines Ltd. v. Olarte et. al.* (1984), 6 C.H.R.R. D/2833 (S.C. Ont.). In that case the Board had held a combined hearing involving allegations of sexual harassment filed by six complainants. The Complainants had testified, and other witnesses had been called to provide similar fact evidence. On appeal the Divisional Court held that the Board was able to admit the similar fact evidence.

Finally, Counsel for the Commission referred to the case of *Morgan v. Toronto General Hospital* (Oct. 14, 1977, unreported, Ont. Bd. of Inq.) It notes that there had at that time been numbers of cases where the complaints of several complainants were joined in one hearing (p.14).

Agent for the Complainants added a reference to Green, wherein it was noted that because sexual harassment usually takes place behind closed doors, and stated that (D/4751), "Such being the case, if similar fact evidence were excluded, the trier of fact would be faced with having to decide an issue based solely on the evidence of the parties before him." Agent for the Complainants submitted that parallels can be drawn to the Complaints in this case, given the allegations in the Case Summaries that the money was paid in cash and in the apartment of Mike Boudreault.

Decision

With respect to the combining of complaints the plain language of Section 32 (3) is very clear. In the instant case the similarity of the four Complaints without doubt "bring into question a practice of infringement engaged in by the same person...," for the alleged acts of Mr. Boudreault would constitute a practice with respect to key money. They represent that is a habit, custom or way of carrying on the part of Mr. Boudreault. In Greygo the board separated the hearing of one complaint from the hearing of the other two on the grounds that two separate instances were involved. If I were to follow this reasoning I would attend to the fact that the alleged instances of receiving key money were separate instances. But to do so would make it impossible to apply the this section of the Code to many if not all cases wherein a practice would be brought into question by two or more complaints. I accordingly decline to do so.

Similar fact evidence has regularly been accepted by Human Rights Tribunals, and the admissibility of such evidence has been upheld by the Courts. It has been specifically admitted with

respect to allegations of sexual harassment, and I would agree with Agent for the Complainants that there is a parallel to the Complaints at hand. On the other hand there is jurisprudence which suggests great caution when parties alleging similar facts have discussed their situation before giving evidence. This is because of a worry, to quote from *Boardman*, "whether his accusers may not have put their heads together to concoct false evidence." In the present case the balance between these two concerns can only be determined in the hearing of the similar fact evidence. Depending upon the facts the question may go to weight or it may go to admissibility.

Based upon both of the above considerations, I rule that the hearing of the Complaints may continue with the Complaints being combined. Similar fact evidence will not be excluded ab initio. However, objections concerning admissibility and the weight of similar fact evidence may be made at the time it is called.

H A Bassford
Aug. 3, 1993